

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
SOUTHERN DIVISION

B. JEAN WEBB,	)	
Plaintiff,	)	
	)	
v.	)	Case No. 98-3306-CV-S-RGC-ECF
	)	
CITY OF REPUBLIC, MISSOURI,	)	
Defendant.	)	

PLAINTIFF'S MOTION FOR AN AWARD OF ATTORNEYS' FEES  
AND SUGGESTIONS IN SUPPORT

On July 9, 1999, the court entered a final judgment permanently enjoining defendant from displaying a City seal that includes the Christian fish symbol. Doc. 40 & 41. Now, pursuant to Rule 54(d)(2), Fed. R. Civ. P., plaintiff moves the court for an award of attorney's fees and expenses under the Civil Rights Attorney's Fees Awards Act of 1976, as amended, 42 U.S.C.A. § 1988, in the amount of \$34,527.17 (\$33,600, fees; \$927.17, expenses). Declaration of Stephen Douglas Bonney and attached computerized billing statement (Ex. 1).

Suggestions in Support

"In any action or proceeding to enforce a provision of section[] . . . 1983 . . . of this title, . . . the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." 42 U.S.C.A. § 1988(b). "[A] prevailing party should ordinarily recover an attorney's fee unless special circumstances would render such an award unjust." Hensley v. Eckerhart, 461 U.S. 424, 430, 103 S.Ct. 1933, 1937 (1983) (internal quotation marks omitted). "[A] plaintiff 'prevails' when actual relief on the merits of his claim materially alters the legal relationship between the parties by modifying the defendant's behavior in

a way that directly benefits the plaintiff." Farrar v. Hobby, 503 U.S. 103, 113 S.Ct. 566, 573 (1992). Here, plaintiff is a prevailing party because she obtained an injunction against the City's use and display of an unconstitutional seal.

"The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate." Hensley, 461 U.S. at 434, 103 S.Ct. at 1939. This calculation yields the lodestar attorney's fee. "Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass all hours reasonably expended on the litigation, and indeed in some cases of exceptional success an enhanced award may be justified." Hensley, 461 U.S. at 435, 103 S.Ct. at 1940.<sup>1</sup>

The first factor in the lodestar calculation is the number of hours reasonably expended. In arriving at the 224.0 hours for which counsel seeks fees, plaintiff's lawyer has relied on contemporaneous time records and has exercised billing judgment by eliminating excessive, redundant, or otherwise unnecessary hours as required by the Supreme Court in Hensley, 461 U.S. at 434, 103 S.Ct. at 1939-40. See Bonney Declaration. The hours spent on this constitutional litigation were reasonable and were in line with hours spent litigating other First Amendment cases. See Bonney Declaration. For instance, in Gilleo v. City of Ladue, a First Amendment free

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<sup>1</sup> In Hardman v. Board of Education, 714 F.2d 823, 825 (8th Cir. 1983), the Eighth Circuit adopted Johnson v. Georgia Highway Express, 488 F.2d 714, 716-17 (5th Cir. 1974) and its twelve factors to be considered in determining a reasonable fee award. The twelve factors are: (1) the time and labor required; (2) the novelty and difficulty of the questions presented; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorney; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the client, or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) the awards in similar cases. "[M]any of these factors are subsumed within the initial calculation of hours reasonably expended at a reasonable hourly rate." Hensley, 461 U.S. at 434 n. 9, 103 S.Ct. at 1940 n. 9.

speech case involving one constitutional issue, the district court awarded fees for 422.75 hours of district court work by four lawyers at rates ranging from \$120 to \$180 per hour. 791 F. Supp. 238, 239 (E.D. Mo. 1992), aff'd in relevant part, 986 F.2d 1180 (8th Cir. 1993), aff'd, 114 S.Ct. 2038 (1994).

The second factor in the lodestar equation is the appropriate hourly rate. The Supreme Court has "repeatedly stressed that attorney's fees awarded under this statute are to be based on market rates for the services rendered." Missouri v. Jenkins by Agyei, 491 U.S. 274, 283, 109 S.Ct. 2463, 2469 (1989). The rate sought here (\$150 per hour) is well within the range of market rates for Kansas City attorneys with experience similar to plaintiff's attorneys. Slough Declaration; Bonney Declaration. The rates are also similar to rates awarded in other civil rights cases in the Eighth Circuit. See Gilleo; Jenkins ex rel. Agyei v. Missouri, 838 F.2d 260 (8th Cir), aff'd, 491 U.S. 274, 109 S.Ct. 2463 (1989) (\$200 per hour for lead attorney); McDonald v. Armentrout, 860 F.2d 1456 (8th Cir. 1988) (\$150 per hour); Hendrickson v. Branstad, 934 F.2d 158 (8th Cir. 1992) (\$180 per hour); Baufield v. Safelite Glass Corp., 831 F. Supp. 713 (D. Minn. 1993) (\$180 to \$200 per hour for attorneys).

Using the above hours and rates yields a lodestar attorneys' fee of \$33,600.00.<sup>2</sup> Because plaintiff obtained excellent results, prevailing entirely on her claims, the court should award the requested lodestar fee, which would be a "fully compensatory fee."

Plaintiff also seeks an award of costs and expenses. "Reasonable expenses, the sort that lawyers ordinarily include in their bills to clients, are recoverable as part of the reasonable attorneys' fee[.]" Neufeld v. Searle Labs, 884 F.2d 335, 342 (8th Cir. 1989) (travel expenses allowed). See also Pinkham v. Camex, Inc., 84 F.3d 292, 294-95 (8th Cir. 1996) (telephone, fax, and

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<sup>2</sup> 224 hours x \$150 per hour = \$33,600.00.

postage expenses recoverable as part of attorneys' fees). Here, plaintiff seeks reimbursement of reasonable, billable expenses for reproduction of videotape and color photographic exhibits (\$47.62), faxes (\$18.60), postage and UPS Next Day Air costs (\$21.60), mileage and parking expenses (\$160.30), long distance telephone charges (\$68.11), courier services for filing documents with the court (\$79.55), expert witness fees for Paul Mirecki (\$200.00), and computerized legal research (\$331.39).<sup>3</sup> Lawyers in the Kansas City market routinely bill these expenses to clients. Bonney Declaration. Thus, the court should award these expenses as part of the reasonable attorneys' fees under § 1988. de Llano v. North Dakota State University, 951 F. Supp. 168, 172 (D.N.D. 1997) (awarding expenses for telephone calls, faxes, postage, mileage, lodging, and computerized legal research as part of attorneys' fees).<sup>4</sup> See also Missouri v. Jenkins by Agyei, 491 U.S. at 287 n. 9, 109 S.Ct. at 2471 n. 9.

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<sup>3</sup> The filing fee (\$150), the court reporter's fees for deposition transcripts (\$178.00), and certain costs for exemplification of papers and exhibits (\$107.85) are recoverable as costs under 28 U.S.C. § 1920. Plaintiff has claimed these costs in the Bill of Costs filed with the Clerk on July 14, 1999 and, in order to avoid a double recovery, is not claiming these costs under § 1988.

<sup>4</sup> In Leftwich v. Harris-Stowe State College, 702 F.2d 686, 694 (8th Cir. 1983), interpreting the fee shifting provision of Title VII, the court of appeals held that "computer-aided research . . . is a component of attorneys' fees and cannot be taxed as an item of cost in addition to the attorneys' fee award[.]" See also Standley v. Chilhowee R-IV Sch. Dist., 5 F.3d 319 (8th Cir. 1993). But, here, plaintiff seeks reimbursement for computerized legal research as an expense that is routinely billed to clients and thus should be charged to defendant as a part of the attorneys' fees like other chargeable expenses. See Haroco, Inc. v. American Nat'l Bank & Trust Co., 38 F.3d 1429, 1440-41 (7th Cir. 1994); O'Farrel v. Twin Bros., 889 F. Supp. 189, 192 (E.D. Pa. 1995). To the extent Eighth Circuit precedent is contrary to this request, plaintiff contends that Leftwich and other such cases were wrongly decided and should be overruled to accord with common attorney billing practices, which charge computerized research costs to clients.

For these reasons, the court should grant this motion and award plaintiff attorney's fees, costs, and expenses in the amounts requested.

Respectfully submitted,

s/ Stephen Douglas Bonney  
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Certificate of Service

I certify that, on July 23, 1999, a copy of the foregoing document was mailed, postage prepaid to: David R. Huggins, National Legal Foundation, PO Box 341283, Memphis, TN 38184-1283, and James M. Kelly, 316 West Hwy. 60, PO Box 327, Republic, MO 65738, Attorneys for Defendant.

s/ Stephen Douglas Bonney